THE TREND OF GOVERNMENTAL REGULATION OF RAILROADS[1]

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In speaking of the trend in the policy of the states and of the national government in the regulation of railroads it is not necessary to go back of 1870. In the early 70's there swept over this country a movement very similar to that which we have witnessed during the last five years: a demand for effective and thorough regulation of the railroads by the states. The legislation that resulted from the agitation was called the "Granger laws," because after the movement had started it was taken up and carried to success by the Patrons of Husbandry, popularly known as the Grangers.

In 1870, the position taken by the public, to some extent, and by the railroad corporations, almost without exception, was that the states did not have the authority to regulate railroad charges. The intensity of the Granger movement in the 70's was largely due to the feeling that it was necessary to prove that the states did have the power to regulate public service corporations. The authority asserted by the states was confirmed by the United States Supreme Court in the Granger decisions of 1876, so that over thirty years ago the principle was firmly established that all transportation rates are subject to legislative control.

Since then it has been a question not of power but of policy. The laws of the 70's, for the regulation of railroads, took three definite forms. One was the enactment of statutory rates—as was done by Iowa in 1874, and by Wisconsin in 1874, when the so-called Potter law was passed. Another method of rate control adopted at that time was the establishing of state commissions with the power to prescribe schedules of rates in some cases; in other instances with the authority only to revise railroad rates, fixed in the first instance by railroads. In some states, notably the eastern, commissions were created with general regulative powers, but without control over rates.

[1]An address delivered at the Annual Meeting of the Academy, April 11, 1908.

It so happened that most of the Granger laws were passed during the five or six years of serious business depression which followed the panic of 1873. For that reason it was not difficult for those opposed to the laws to establish the contention that the laws had brought about a serious business condition in the railroad world. I do not think any considerable number of impartial students of economic history would now assert that the Granger laws had very much to do with the embarrassment of the railroads from 1873 to 1879. The railroads, like other forms of business activity, suffered from the conditions of the time. To some extent those laws might have contributed to the unhappy condition of the railroads, but the misfortunes of the railroads in the 70's were due primarily to their overspeculation in the past, and to the general business situation prevailing in this country from 1873 to 1879.

It was but natural, however, that a reaction from the early Granger legislation should take place. Many states that had first fixed railroad rates by statutory law repealed their acts. Some states which had established commissions with power to adjust rates took that function away from their commissions. Other states, like Illinois, maintained their commissions with the rate adjusting power. This was the second phase of the development of railway regulation in this country. It was a tendency toward more conservative legislation, a movement that lasted until about 1890.

Shortly before 1890, a movement for more stringent and thorough regulation of the railroads set in, and all the state commissions established from 1890 to 1906, and there were many of them, were what are called "strong" commissions, those having power not only to supervise railroads, but also to regulate their charges. Thus during the last twenty years we have been adhering to the principles, and to some extent to the practice, of the Granger legislation of the 70's.

This third phase of the government regulation of railroads has culminated in two rather distinct tendencies, one of which is the reenactment by many states, of laws fixing statutory railroad charges. These laws of the last five years have, with the exception of those of nine states, applied only to passenger fares.

The other recent tendency has been the establishment of corporation and public utilities commissions. Six years ago North Carolina and Virginia established corporation commissions, giving

to the same body of men power over banks, railroads and common carriers other than railroads. Last year the State of New York established its Public Utilities Commissions, one for the State of New York and the other for the City of Greater New York. These commissions have power over the charges and services of all public service corporations. The State of Wisconsin has also given its railway commission powers over public service corporations, and other states are debating the question. This movement represents the latest phase of the evolution of state regulation of railroads.

Along with the growth of the power of the states over transportation there has also gone on a development of national regulation of railroads. The federal act of 1887, although amended in detail from time to time, was not greatly changed until 1906, when the so-called Hepburn bill of the 29th of June was passed. That law expressing the mature judgment of the American people, who had given serious thought to the question for at least a decade, established in statutory form two fundamental principles. There were many minor provisions; but the two really important ones were those empowering the Interstate Commerce Commission to require uniform accounting, and to adjust railroad charges.

The Interstate Commission has prescribed uniform accounting, and the books of the railroad companies are now as open to the government as are the books of banking companies. The business of railroading has in a large measure ceased to be private, and has become open and public. This, in my judgment, is the most important provision in the Hepburn act.

The other new power given the Interstate Commerce Commission is the authority, upon complaint and investigation regarding an existing rate, to name a reasonable maximum rate which the carrier shall charge for a particular service. The commission is not given the general rate making function, but merely the power to make an adjustment, and its authority over charges can be exercised only on complaint and after investigation. Its action must be confined to particular rates.

The federal government now requires that interstate railroad rates shall be public, that the service shall be equitably performed and that the books of the railroads shall be open to the Interstate Commerce Commission. The law further stipulates that if, in the

management of that service, unreasonably high or unreasonably discriminatory rates are charged, they shall be adjusted by public authority. This is the present status of national regulation of railroads.

In the simultaneous development of the power of the states and the federal government, the two authorities have come into conflict to some extent, but the conflict of the states and the nation is due mainly to the fact that commerce has changed. The friction between the two authorities is but the natural consequence of the fact that trade and transportation have changed from state to national. It is quite true, as President Mather[2] has explained, that the states in fixing charges may exercise a very large influence over interstate rates. Every state commissioner and every state legislator ought to read President Mather's paper, because it would aid them in measuring the effects of their actions. If legislators and state commissioners know exactly what effects their laws and decrees produce they may generally be trusted to exercise their power with discretion.

It does not seem wise to go so far at the present time as to take away from the states, if it be possible to do so, by indirection or otherwise, their power over the commerce within their boundaries. We do not need to hasten the evolution of national authority. That will surely expand as fast as will be well for our national institutions. It is better, for the present at least, to conserve to the states in as full a measure as possible the powers they have over commerce.

Most of us will agree, I think, that the state two-cent fare laws were unwise, because not based upon sound principles. While I believe fully in the desirability of federal and state regulation of public service corporations, I am equally certain of the fundamental fact that the regulation of public transportation is an administrative function, and that it is unwise for the states to declare by statute what rates and fares shall be. Economic conditions change, what is reasonable one year may be unreasonable the next year, either in passenger fares or in freight rates. The true adjustment of charges to service can be brought about only by continuous administration, and not by the enactment of rigid statutes. In order to maintain

[2]Consult the preceding paper on "How the States Make Interstate Rates," by Mr. Robert Mather.

a reasonable relationship between services and charges, one that is just from the public point of view and equitable to the carrier, it is necessary to place in the hands of some competent and responsible commission the power to regulate the services and the rates of railroads.

There are, it is true, many people who believe it is not wise to give to a commission, state or national, the power to say what a railroad charge shall be. This is hardly the place to enter upon a discussion of that large question, and I must content myself with the mere statement that I believe the time has now come when we must accept not only the soundness of the theory, but the desirabilty of the practice, of investing in some public body the power to say to the carrier that his charge, from the public point of view, is or is not a reasonable one. Moreover, I do not believe that we thereby run into any serious danger.

The American people are conservative. Much is said about our radicalism, about the tendency of our legislators to follow public whims, but candidly is the charge true? Is it not rather the fact that the American people, in their attitude toward capital and labor, are on the whole and in the long run, conservative? Is it not a wiser policy to continue along the line of evolution which we have followed for thirty years, instead of reversing our policy because of the present temporary depression in business? I believe that we shall not turn back, but that we shall go ahead developing the power of the states and of the nation, so that they may bring about, as regards the regulation of transportation services and charges, the fullest measure of equity to carrier, to passenger, and to shipper.